COURT No.1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 1758 of 2018
With
M.A. No. 1952 of 2018

In the matter of :

Ex LEMR Adarsh Chaure ... **Applicant**

Versus

Union of India & Ors. ... **Respondents**

For Applicant : Shri Virender Singh Kadian, Advocate

For Respondents : Shri Shyam Narayan, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

O R D E R

M.A. No. 1952 of 2018 :

Vide this application, the applicant seeks condonation of delay of 4195 days in filing the OA. In view of the law laid down by the Hon'ble Supreme Court in the case of ***Deokinandan Prasad Vs. State of Bihar*** ***[AIR 1971 SC 1409]*** and in the case of ***Union of India & Ors. Vs. Tarsem Singh*** ***[2009 (1) AISLJ 371]***, delay in filing the OA is condoned.

MA stands disposed of accordingly.

O.A. No. 1758 of 2018 :

Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

> ***"(a) Quash and set aside the impugned letter No. LC/PEN/600/Legal Notice/177032-Y dated 31.08.2018. And/or***
>
> ***(b) Direct respondents to treat the disability of the applicant as attributable to or aggravated by military service and grant him disability element of pension, and benefits of broad banding and/or***
>
> ***(c) Direct respondents to pay the due arrears of disability pension with interest @ 12% p.a. from the date of discharge with all the consequential benefits.***
>
> ***(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case along with cost of the application in favour of the applicant and against the respondents."***

2. The facts of the case in brief are that the applicant was enrolled in the Indian Navy on 08.01.1992 and was discharged from service on 31.01.2007 after completion of 15 years and 24 days of service in low medical category 'S_3A_2(P) Pmt'. Before discharge from service, the applicant was brought before the Release Medical Board (RMB) held in October, 2006 which assessed the applicant's disability i.e. GENERALISED SEIZURE DISORDER @ 15-19% for life and the same was considered to be 'neither attributable to nor aggravated by military service'.

3. The initial claim for disability element of pension of the applicant was rejected by the respondents vide letter dated 21.02.2007 advising the applicant to prefer an appeal against the decision, if need be, within six months of that communication. However, no appeal was preferred by the applicant. Thereafter, the applicant served a Legal Notice-cum-Representation-cum-Appeal dated 31.03.2018 seeking disability element of pension, which was also rejected by the respondents vide their letter dated 31.08.2018 on the ground that the disability of the applicant was considered as neither attributable to nor aggravated by service and assessment

thereof was made at less than 20% (15-19%). Hence, this OA.

4. The learned counsel for the applicant submitted that the applicant at the time of enrolment was fully fit medically and physically and no note was made in his medical documents to the effect that he was suffering from any disease at that time, and the onset of the disability occurred due to stress and strain of the military service. The learned counsel submitted that the disability in question had occurred in May, 2000 when he was posted at INS Jarawa/COMCEN (PB), Port Blair due to various adverse service conditions. The learned counsel explained about the stressful and challenging conditions of service performed by the applicant having served in various places in different environmental and geographical conditions in his prolonged service. The learned counsel also referred to Rules 5 and 14(b) of the Entitlement Rules, 1982 to submit that the deterioration of health is to be presumed to be due to service conditions; Rule 9 regarding onus of proof which lie on the respondents; Rule 7(b) stipulates that a disease which has led to an individual's discharge or death will ordinarily be

deemed to have arisen in service if no note of it was made at the time of individual's acceptance of military service; Rule 19 thereof to contend that if the worsening of a condition persists till the time of discharge, aggravation is to be accepted and also referred to various rules and regulations in support of the case of the applicant. The learned counsel, therefore, prayed that the disability in question may be held as attributable to and aggravated by military service and that the disability pension may be granted to the applicant.

5. In support of his contentions, the learned counsel relied upon the various judgments of the Hon'ble Supreme Court including the case of ***Dharamvir Singh Vs. Union of India & Ors.*** ***[2013 (7) SCC 316]*** and in ***Union of India & Anr. Vs. Rajbir Singh*** ***[2015 (2) SCALE 371]***, which has been considered and taken note of by the Hon'ble Apex Court in many of its judgments, wherein the Apex Court had considered the question with regard to grant of disability pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers and Para 423 of the Regulations for the Medical Services of the Armed Forces, it was held by

the Hon'ble Supreme Court that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds being in low medical category, any deterioration in his health, which may have taken place, shall be presumed to be due to service conditions. The Apex Court further held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is neither attributable to nor aggravated by military service. The learned counsel further placed reliance upon various orders passed by the Tribunal including ***Ex Sep Jai Singh V. Union of India [O.A. No. 320/2015 decided on 09.07.2015]; Sqn Ldr Kshitej Kumar Vs. Union of India & Ors. [O.A. No. 714/2015 decided on 08.09.2015]*** where similarly situated persons were granted the disability pension by the Tribunal.

6. *Per contra,* the learned counsel for the respondents submitted that the applicant is not entitled to the relief claimed since the RMB, being an expert body, found the

disability of the applicant as "Neither Attributable to Nor Aggravated by Military Service" and assessed the same at less than 20%. The learned counsel contended that as the applicant's disability does not fulfil the mandatory twin conditions in terms of Regulations 101 and 105-B of the Navy Pension Regulations, 1964 of being held attributable to or aggravated by military service and assessed @ 20% or more, the applicant is not entitled to disability pension and, therefore, he prayed that the present OA may be dismissed.

ANALYSIS

7. We have heard the learned counsel for the parties and have perused the record. The issue which needs to be considered in this case is as to whether the applicant is entitled to the disability element of disability pension for the disability in question i.e. Generalised Seizure Disorder, when it is held as NANA and also assessed at less than 20% by the RMB ?

8. It is an undisputed fact that at the time of joining the Indian Navy on 08.01.1992 and the applicant was found medically and physically fully fit in all respect. The present disability has admittedly been diagnosed in May, 2000 due to

which, at the time of discharge, the applicant was placed in low medical category S_3A_2(P) Pmt. The RMB has considered the disability as NANA and assessed the same at less than 20%, which resulted in denial of disability pension to the applicant.

9. The law on the issue of attributability of a disability is already settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India*** ***[(2013) 7 SCC 316],*** which has been followed in subsequent decisions of the Hon'ble Supreme Court and in a catena of orders of this Tribunal, wherein the Apex Court had considered the question with regard to grant of disability pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules for Casualty Pensionary Awards, 1982 and the General Rules of Guide to Medical Officers (Military Pensions), 2002 and Para 423 of the Regulations for the Medical Services of the Armed Forces, it was held by the Hon'ble Supreme Court that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in

the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. The Apex Court further held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is neither attributable to nor aggravated by military service. The guidelines laid down vide the verdict in *Dharamavir Singh (supra)* are as under:-

> ***"28. A conjoint reading of various provisions, reproduced above, makes it clear that:***
>
> ***(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).***
>
> ***(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].***
>
> ***(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).***

(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].

(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].

(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and
(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitlement : General Principles", including paragraph 7, 8 and 9 as referred to above."

10. The Hon'ble Supreme Court in the case of ***Union of India & Ors. Vs. Rajbir Singh [2015 (2) SCALE 371)*** decided on 13.02.2015, after taking note of its judgment in the case of *Dharamvir Singh (supra)* upheld the decision of this Tribunal granting disability pension and observed as under :

"15. ..... Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces. There may indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on

that ground, it must be affirmatively proved that the disease had nothing to do with such service....."

11. Further, it would be pertinent to refer to Para 33 of the Guide to Medical Officers (GMO) (Military Pensions) 2002 [hereinafter referred to as 'GMO (MP) 2002'], which stipulates the conditions for assessing attributability of 'Epilepsy (seizure)' and is reproduced as hereunder :

"33. <u>Epilepsy</u>

This is a disease which may develop at any age without obvious discoverable cause. The persons who develop epilepsy while serving in forces are commonly adolescents with or without ascertainable family history of disease. The onset of epilepsy does not exclude constitutional idiopathic type of epilepsy but possibility of organic lesion of the brain associated with cerebral trauma, infections (meningitis, cysticercus, encephalitis, TB) cerebral anoxia in relation to service in HAA, cerebral infarction and hemorrhage, and certain metabolic (diabetes) and demyelinating disease should be kept in mind.

The factors which may trigger the seizures are sleep deprivation, emotional stress, physical and mental exhaustion, infection and pyrexia and loud noise.

Acceptance is on the basis of attributabiltiy if the cause is infection, service related trauma.

Epilepsy can develop after time lag/latent period of 7 years from the exposure to offending agent (Trauma, Infection, TB). This factor should be borne in mind before rejecting epilepsy cases.

Where evidence exists that a person while on active service such as participation in battles, warlike front line operation, bombing, siege, jungle war-fare training or intensive military training with troops, service in HAA, strenuous operational duties in aid of civil power, LRP on mountains, high altitude flying, prolonged afloat service and deep sea diving, service in submarine, entitlement of attributability will be appropriate

if the attack takes place within 6 months. Where the genetic factor is predominant and attack occurs after 6 months, possibility of aggravation may be considered."

13. In the instant case, although at the time of the onset of disability in May, 2000 while the applicant was posted in peace area however, from the posting profile of the applicant as mentioned in the Personal Statement of the RMB proceedings, he is found to be on afloat service/field posting about two years prior to the onset of the disease from 17.03.1993 to 16.05.1998 onboard INS Sukanya, and furthermore, he was earlier posted to field area/afloat service onboard INS Deepak (Oil Tanker) from July, 1992 and September, 1992. Therefore, on perusal of the record, it is apparent that the applicant was diagnosed with the disability in question within two years of the field posting. During such a long service of more than five years of the applicant onboard INS Sukanya w.e.f. 17.03.1993 to 16.05.1998 and earlier also, the applicant was likely to have been subjected to sleep-deprivation, emotional stress, physical and mental exhaustion and loud noise etc. which are considered to be the triggering factors for the disability of Seizure (Epilepsy) as per the provisions contained in Para 33 of the GMO (MP)

2008 which cannot be overlooked while determining the attributability of the disability. Also, in terms of the aforesaid provisions, Epilepsy can develop after a time lag/latent period of seven years from the exposure of the offending agent, thus the likelihood of the onset of the disability, seizure, of the applicant in May, 2000 pursuant to the applicant having been posted onboard INS Sukanya from 17.03.1993 to 16.05.1998 cannot be ignored. Therefore, in the facts and circumstances of the present case, we are of the considered view that while the disability of the applicant is not considered to be aggravated by service, however, the same is held as attributable to Naval service.

14. As far as the assessment of the disability being less than 20% (15-19%), while no guidelines for assessment of the Epilepsy have been given in the GMO, 2002, however, the MoD, Office of the DGAFMS had issued certain guidelines vide letter No. 16036/DGAFMS/MA(Pen/Policy) dated 20.07.2012 for assessment of the disability percentage of Diabetes Mellitus and Epilepsy as there were no guidelines for assessment thereof were given at the time of amendment made to GMO 2002 in the year 2008. Accordingly, as per the

aforesaid policy, the guidelines for assessment of the disability percentage of Epilepsy are as under:

"(b) <u>Epilepsy</u>

(i) Seizure free without medication for 5 yr or more :less than 20%

(ii) Seizure free on medication or
Seizure free without medication for less than 5 yr : 20%

(iii) Breakthrough seizure while on medication deficit : > 20%
**** Moderate : 1-5 Convulsions/month : 30%***
Severe : 6-10 Convulsions/month : 50%
Very severe : More than 10 convulsions/month : 80%"

15. In the present case, it is pertinent to take note of the specialist opinion dated 15.09.2006 attached with the RMB proceedings which stated that the applicant's last episode of seizure was in 'end May 2000' and that thereafter, after having been kept under observations and under treatment with AED (i.e. Anti-Epilepsy Drugs), the applicant claimed to have been seizure free till the RMB took place. Accordingly, the applicant was on medication for the disability in question and after about five years, he became seizure free. Therefore, in terms of the guidelines for assessment of Epilepsy under Clause (b)(ii) of the aforementioned policy letter dated 20.07.2012, which has been reproduced hereinabove, the percentage of disablement cannot be assessed at less than 20%.

16. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is held entitled for the disability element of disability pension in respect of the disability i.e. Generalised Seizure Disorder @ 20% for life with the broad-banding benefits.

CONCLUSION

17. Therefore, the OA 1758 of 2018 is allowed. The respondents are directed to grant the disability element of pension to the applicant @ 20% for life from the date of discharge, which is directed to be rounded off to 50% for life in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of ***Union of India Vs. Ram Avtar [Civil Appeal No. 418/2012]*** decided on 10.12.2014.

18. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within three months from the date of receipt of copy of this order, *failing which,* the applicant shall be entitled to interest @ 6% per annum till the date of payment. However, as the applicant has approached the Tribunal after a considerable delay, in view of the law laid down by the Hon'ble Apex Court

in the case of *Tarsem Singh (supra)*, arrears will be restricted to three years prior to the date of filing of this OA.

18. There is no order as to costs.

Pronounced in open Court on this 22nd day of August, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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